## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Civil Action No. 6:20-cv-00730-ADA

JURY TRIAL DEMANDED

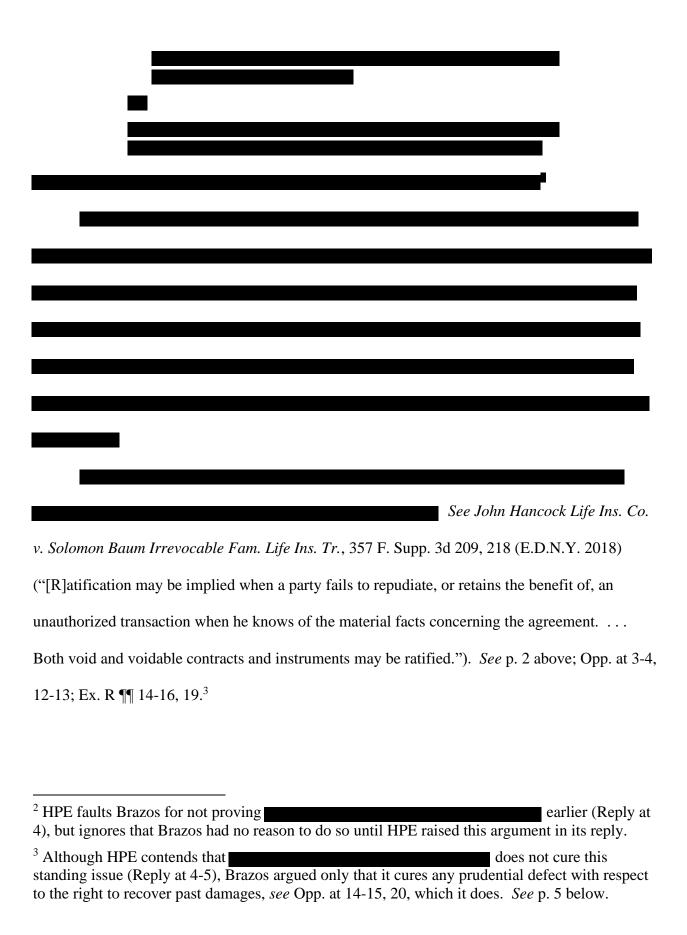
FILED UNDER SEAL

BRAZOS'S SUR-REPLY IN OPPOSITION TO HPE'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FRCP 12(B)(1) (DKT. 53)

## BRAZOS HAS ARTICLE III STANDING I. Brazos and the Assignment Is

<sup>&</sup>lt;sup>1</sup> HPE expressly concedes that is irrelevant. *See* Reply § I.C.

HPE raises a new argument not made in its Motion
. Reply § I.B. New
arguments in a reply brief are not proper. See Mikel v. Carrington Mortg. Servs., LLC, No. 1:10
ev-01107, 2019 WL 4060890, at *5 (W.D. Tex. June 25, 2019) ("It is the practice of this court and the district courts to refuse to consider arguments raised for the first time in reply briefs.").
But HPE is also wrong.



α. I ■	BRAZOS HAS STANDING TO SUE FOR PAST INFRINGEMENT OF THE ASSERTED PATENT
•	
	HPE's reply cites only the same authorities as its
	see Reply at 8; Mot. at 9, 12-13, which support this conclusion. See also Opp. at 16.
1	IPE's contention that Amended Schedule B1 should control (Reply at 9) is misguided.
	In any event, Amended Schedule B1 is <i>part</i> of the
PPA, an	d the documents must be considered together. See, e.g., Minco, Inc. v. Combustion
Eng'g, I	nc., 95 F.3d 1109, 1118 (Fed. Cir. 1996) (only some agreements in a series expressly
assigned	the right to past infringement, but "the entirety of the agreements establish[] that the
MAC as	signment clearly conveyed the right to sue for past infringement").
I	IPE's claim that the PPA is not (Reply at 9) also fails.
	Opp. at 17
18; <i>see</i> ,	e.g., Speedplay, Inc. v. Bebop, Inc., 211 F.3d 1245, 1253 (Fed. Cir. 2000). As HPE
admits,	

Finally, contrary to HPE's suggestion, which is unsupported by any citation to auth	ority,
Any remaining doubt that Nokia explicitly transferred the right to sue for past dama	ages ir
the PPA is obviated by	4
Last, HPE's contends, again incorrectly,	
H	IPE
misreads the document.	
	 [

<sup>&</sup>lt;sup>4</sup> This issue of one of prudential or statutory standing and thus may be cured, if necessary, after an action is filed. Opp. at 14-15. HPE's reply restates its position, but offers no controlling authority showing that the right to recover past damages implicates constitutional standing.

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Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure on October 29, 2021.

/s/ Raymond W. Mort, III
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